

By hand delivered

September 13, 2006

Ms. Andrea Nixon, Clerk
Cable Television Division
One South Station
Boston, MA 02110

Re: CTV 06-1, Reply Comments of Issuing Authorities and Access Centers

Dear Ms. Nixon:

We have attached the joint Reply Comments of twenty-six Massachusetts municipalities, the Northeast Region and the Massachusetts Chapter of the Alliance for Community Media and five access centers, for entry into the record in CTV 06-1, Notice of Public Hearing and Request for Comment by the DTE - Cable Television Division on Proposed Amendments to Rules and Regulations Governing the Cable Television Licensing Process.

Thank you for your attention to this matter. Please do not hesitate to contact us should you require additional information concerning the attached Reply Comments.

Very truly yours,

William August

Peter Epstein

Attachments

cc: Commenting Parties

Before the
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & ENERGY
CABLE TELEVISION DIVISION

Proposed Amendments to)
Rules and Regulations Governing the)
Cable Television Licensing Process -)
Notice of Public Hearing and)
Request for Comments)

Docket No. CTV 06-1
September 12, 2006

REPLY COMMENTS OF
BELMONT, BROOKLINE, CANTON, DARTMOUTH, DEDHAM, EASTHAMPTON,
FRAMINGHAM, GRAFTON, GROVELAND, HINGHAM, LAKEVILLE, LITTLETON,
MILTON, NATICK, NEEDHAM, NEWTON, NORTHBOROUGH, NORWOOD,
SALISBURY, SUDBURY, TAUNTON, WELLESLEY, WESTFORD, WESTWOOD,
WILBRAHAM AND WILMINGTON,
THE MASSACHUSETTS CHAPTER OF THE ALLIANCE
FOR COMMUNITY MEDIA, THE NORTHEAST REGION OF THE ALLIANCE
FOR COMMUNITY MEDIA, BOSTON COMMUNITY PROGRAMMING AND
ACCESS FOUNDATION, INC., CAMBRIDGE COMMUNITY TELEVISION, INC.,
LUDLOW COMMUNITY TELEVISION, SOMERVILLE COMMUNITY ACCESS
TELEVISION, INC. AND WORCESTER COMMUNITY CABLE ACCESS, INC.

I. Introduction

The Towns and Cities of Belmont, Brookline, Canton, Dartmouth, Dedham, Easthampton, Framingham, Grafton, Groveland, Hingham, Lakeville, Littleton, Milton, Natick, Needham, Newton, Northborough, Norwood, Salisbury, Sudbury, Taunton, Wellesley, Westford, Westwood, Wilbraham and Wilmington (the “Issuing Authorities”), the Massachusetts Chapter of the Alliance for Community Media (“Mass Access”), the Northeast Region of the Alliance for Community Media (“ACM-NE”), Boston Community Programming and Access Foundation, Inc., Cambridge Community Television, Inc., Ludlow Community Television, Somerville Community Access Television, Inc. and Worcester Community Cable Access, Inc. (collectively “the Commenting Parties”), hereby submit Reply Comments on the Cable Television Division’s Notice of Public Hearing and Request for Comments on Proposed Amendments to Rules and Regulations Governing the Cable Television Licensing Process (CTV Docket 06-1, May 5, 2006). The Issuing Authorities are responsible for cable television licensing and therefore have a substantial and direct interest in amendments to the Massachusetts licensing process. Mass Access, ACM-NE and the access centers are directly responsible for or represent Massachusetts public, educational and governmental (“PEG”) access cable facilities governed by cable licenses, and therefore also have a substantial and direct interest in possible amendments to the cable licensing process.

At the August 16, 2006 Public Hearing in this matter, there was extensive and compelling direct testimony from scores of municipal officials, state legislators, incumbent cable operators, community television managers and producers, all of whom strenuously opposed abbreviation of

the initial licensing process. Indeed, in the history of cable television licensing regulation in Massachusetts, the degree and intensity of opposition to Verizon's proposed amendments is virtually unprecedented. The opposition is strong affirmation of the municipal position that Verizon's proposed amendments would far too radically undermine the licensing process that has well served municipalities and cable operators for decades. Like the testimony at the public hearing, the initial written comments filed in this proceeding show extensive and compelling opposition to the amendments, making even clearer that the overwhelming majority of interested persons strenuously oppose the proposed amendments for multiple important reasons.

Although in our view the case against the proposed amendments has already been persuasively made at the public hearing and in Initial Comments, we take this opportunity to elaborate on certain critical points and questions raised in the course of this proceeding. These Reply Comments elaborate on substantive items negotiated during initial licensing and how these substantive items, taken as a whole, cannot be responsibly negotiated under the procedures and timetables recommended by Verizon. In addition, the Reply Comments address certain broader themes not discussed fully in Initial Comments, including how a longer licensing process actually forges a stronger industry-municipal partnership that is mutually beneficial, and promotes high level First Amendment, localism and diversity values of benefit to the Commonwealth as a whole. In addition, the Reply Comments address several Cable Division information requests issued after the public hearing.

II. Initial Licensing Requires at Least One Year for Proper Negotiations of Diverse Substantive and Legal Issues

One theme emphasized at the public hearing that warrants further Cable Division attention is the importance of recognizing the large number of substantive and legal issues, in addition to diverse procedures, that must be evaluated, negotiated and drafted as part of a proper initial licensing process. This point requires further emphasis in light of Verizon's position that ascertainment, negotiation and drafting can somehow be truncated to a total 90 day period. Municipal negotiations with cable license applicants address numerous substantive and important cable service issues, notwithstanding Verizon's premise is that initial licensing involves relatively few issues. The initial licensing process must address the following substantive issues which require considerable research, negotiation and drafting:

1. Level Playing Field Issues and Analysis

Completely omitted from Verizon's argument that initial licensing is now a routine, easy process susceptible to quick resolution is the issue of incumbent "level playing field" requirements. Clearly, level playing field analysis and negotiation now makes initial licensing a more complex and protracted process, not less so. As is well known to the Cable Division, courts addressing level playing field requirements have upheld level playing field requirements and numerous state legislatures have actually implemented level playing field requirements. For years, all incumbents operating in Massachusetts have absolutely refused to sign licenses without level playing field clauses. Issuing Authorities have not wanted level playing field clauses. However, Issuing Authorities have gone along with incumbent insistence on level playing field clauses out of a sense of equity and fair play. Such provisions now require Issuing Authorities to exercise reasonable efforts to ensure that new entrants and incumbents compete on fair and similar terms. Issuing Authorities therefore need a reasonable timetable that does not punish them for accepting the responsibility of helping to promote fair competition. If Issuing Authorities cannot secure fair competition terms, incumbents will be injured. If Issuing Authorities do not negotiate a level playing field, not only will the cable operators have

inequitable competition, but Issuing Authorities will face the risk of incumbents seeking elimination of valuable I-Net and community television benefits, and countless other benefits. Negotiating level playing field conditions is essential not only for getting a fair license from Verizon, but for preventing real monetary and service losses that could result from existing companies using level playing field clauses to retrench on existing commitments.

Verizon can easily facilitate and greatly expedite the negotiation of level playing field negotiations by doing what RCN frequently did: agreeing to adjust its licenses to provide additional benefits in the event a state agency or court ever find Verizon not to be competing on a level playing field. However, Verizon refuses to agree to such level playing adjustment clauses. Verizon could also expedite level playing negotiations by submitting a level playing field analysis to Issuing Authorities. More often than not, it is the municipality that prepares such a level playing field analysis.

It warrants particular emphasis that level playing field analysis requires comparison of all the terms and benefits of Verizon's proposed license and the incumbent's license, as level playing field analysis is a comparison of the totality of license terms and conditions. Again, it is simply erroneous to assert (as Verizon does) that initial licensing has relatively few issues, as initial licensing includes level playing field analysis and comparison of all of the license terms in two often disparate licenses.

2. Service Area and Construction Issues

The negotiation process with Verizon determines the service area parameters, including which streets get service or not based on negotiated density standards. The negotiation process with Verizon has determined the service area construction timetable, often requiring months for determination of this very important issue. Service area and construction timetable negotiations address matters of importance, underscoring the inappropriateness of treating cable license negotiations as perfunctory or routine.

3. Customer Service

The negotiation process with Verizon has required time-consuming review of Verizon-proposed consumer protection and customer service standards, a process made time-consuming because of Verizon's unwillingness to simply use FCC-prescribed customer standards used and accepted by all incumbent operators.

4. Verizon Interconnection to Incumbent

Notwithstanding Verizon's position that in many towns it must first negotiate an interconnection agreement with the incumbent cable operator in order to carry community programming (e.g., Public, Educational and Governmental Access) from multiple video origination points, Comcast has stated on the record in this proceeding that Verizon only initiated interconnection discussions with Comcast by a letter sent approximately 6 weeks prior to the public hearing. As Comcast-Verizon interconnection negotiations have barely begun and are pending, municipalities thus cannot yet even evaluate how Verizon will interconnect important community programming (as Comcast-Verizon negotiations are pending). Similarly, Verizon takes the position that if it cannot reach an interconnection agreement with an incumbent, it will find some lawful method of interconnection. However, Verizon will not yet specify what that method will be (in Towns with multiple origination points lacking a single local hub). As a result of the foregoing, many towns and cities do not even know, and therefore cannot

meaningfully assess Verizon's community television proposal, because Verizon itself does not yet know whether and/or how it will be able to interconnect its system with incumbent systems for interconnection of multiple video origination points. While this situation is understandable in light of the complexities of interconnection, such complexity rebuts Verizon's claim that licensing is a simple process with only a handful of easily resolved issues. Verizon has taken the position that it needs between six – twelve months for negotiating interconnection agreements with an incumbent. That Verizon needs six to twelve months to negotiate one substantive issue (interconnection) clearly underscores the reasonableness of the municipal position that cities and towns cannot hold hearings, negotiate and draft a comprehensive license addressing multiple substantive issues in only ninety (90) days.

5. Funding

Issuing Authorities and Cable Advisory Committees typically conduct analysis of public, educational and/or governmental access, Institutional Network and other cable-related needs, including preparation of capital and operating budgets. Given the technical nature of cable and INet technology, and competing interests of diverse cable users within the municipality, municipal determination of local funding needs is an important budgeting process requiring several months for adequate participation, preparation, negotiation and drafting.

6. Verizon negotiations for unilateral termination of license; term of license

--As noted at the Public Hearing, Verizon negotiators have frequently insisted on language allowing Verizon to unilaterally terminate its cable license. Although Verizon has argued in negotiations that approximately 30% of Massachusetts incumbent licenses provide for some unilateral termination, we note that it is only a minority (30%) of existing licenses that contain unilateral termination language (according to Verizon's own data). Moreover, it is the experience of the undersigned that Comcast will delete unilateral termination language when requested to do, however, Verizon itself has stretched out negotiations in several communities by requiring long periods of negotiation on this point alone. This is a crucial negotiation item, as the whole negotiation process can be negated by allowing Verizon unilateral termination rights. Again, if Verizon desires faster speed-to-market, it is already within Verizon's ability to utilize more standard language (like 70% of existing licenses), and not require unilateral termination rights. Negotiating the related issue of term of license also requires considerable time, as municipal officials cannot make a final decision on appropriate duration of a license until they are able to review and assess the proposed license conditions taken as a whole.

7. Verizon use of non-standard definition of Gross Annual Revenues.

It deserves emphasis that Verizon license drafts provided to Towns include approximately seventeen (17) exceptions to the definition of "Gross Annual Revenues," notwithstanding the fact that existing cable licenses in Massachusetts do not, and have not, included such a long list of exclusions. Moreover, many of the Verizon exceptions to Gross Annual Revenues have not been readily understandable and therefore considerable time is required even for municipalities to understand the meaning of Verizon's draft language. Because funding for PEG Access programming is generally based on Gross Annual Revenues, it is necessary for municipalities to fully understand Verizon's complex approach to defining the term. The importance of negotiating a different Gross Annual Revenues definition is heightened by the fact that if Verizon's definition is more restrictive than the incumbent's, then the incumbent may come back and ask for level playing field adjustments. If Verizon desires faster

speed-to-market, it is already within Verizon's ability to utilize existing and long-used language with respect to critical substantive issues such as the definition of Gross Annual Revenues.

8. Institutional Network

The negotiation process with Verizon has met with difficulties because Verizon has firmly refused to build Institutional Networks notwithstanding the fact that many incumbent systems have aging I-Nets in need of replacement or upgrading. The INet negotiations have been made difficult by Verizon's unwillingness even to dedicate surplus fiber strands for INet use, a practice RCN readily deployed upon municipal request (at great savings to municipalities and taxpayers).

9. Senior Citizens

The licensing process has been made more time-consuming by Verizon's unwillingness even to provide a discretionary discount for income eligible senior citizens, as customarily provided by incumbents.

10. Emergency Communications

In this age of universally acknowledged emphasis of the importance of "first responders" (local police and fire) having access to emergency communications systems, the Verizon negotiations were also repeatedly slowed by Verizon's oft-stated refusal to provide local emergency override capabilities via the cable system (Verizon only occasionally agreed to local override capability.)

11. Definition of Cable System

At the public hearing in this matter, many parties commented on how Verizon insisted on using a narrow and non-standard definition of "Cable System" until recently, and parties explained that Verizon's definition excluded all physical plant from the definition of Cable System. The Cable Division and its counsel asked if this had a practical impact on the general public and municipal interests. By way of follow-up to the Cable Division's question, it should be noted that Verizon's draft license also limited its indemnification obligations to injuries resulting from operation of the "Cable System." Thus, for example, if personal injury or death were caused by a telephone company wire or fixture falling and injuring someone, the City or Town would not have the benefit of Verizon indemnification language, as Verizon's draft licenses excluded all such physical plant from being part of the indemnified "Cable System." The definition issue was part of a broader exclusion of Verizon's physical plant from Cable Act, Title VI cable licensing regulation of the right-of-way. Verizon's position is that the physical regulation of the plant could only be under Title II (regarding common carriers) and could not be under Title VI (regarding "Cable Systems"). This has significant practical impact: Towns and Cities would lose important Cable System right-of-way management rights established in virtually all current cable licenses, e.g., requirements concerning placement of pedestals and vaults; requirements for municipal inspection of Cable System infrastructure; specifications for street restoration applicable to cable plant; requirements concerning tree trimming and other right-of-way conditions applicable to Cable Systems, etc. Verizon's approach triggered level playing field concerns as the Verizon approach, if accepted by municipalities, could cause incumbent operators to argue they were subject to more burdensome right-of-way management than Verizon. If Verizon had desired greater speed to market, it could easily have accepted

municipal compromises that would have only imposed Title VI right-of-way management conditions that were not in actual conflict with Title II requirements.

We respectfully submit that it is within Verizon's ability to negotiate franchises that provide more responsive substantive terms with respect to emergency override, INet, senior discount, and consumer protection, all of which would facilitate and speed local licensing. While Verizon has engaged in good faith negotiations concerning service area and construction timetables, substantive issues described above are of great public import and it is simply inaccurate to aver that the parties can fairly negotiate, draft and conduct public proceedings on such a myriad of major issues within a mere 90 days.

III. A Broader Perspective of Municipal, Public and Industry Long Term Interests: Maintaining History of Partnership Between Industry and Communities Promotion of Localism and Local Information; Diversity; First Amendment Values;

Several important broader themes emerged at the Public Hearing and in Initial Comments regarding how the current licensing process actually forges a stronger industry-municipal partnership that is mutually beneficial, and promotes high level First Amendment, localism and diversity values, as discussed below. The experience of most municipalities is that the existing cable licensing framework creates a working relationship between municipalities and cable operators. In this sense, a fundamental virtue of cable licensing is that licensing actually brings industry and community representatives together, and promotes collaboration through negotiation and licensing. It will simply be impossible for cable operators to respond to community needs if they are not willing even to take the time to learn about and negotiate community needs. A 90 day licensing timetable will, among other things, destroy the dynamics and information exchange that have created a positive working relationship between municipalities and the cable industry.

As discussed at the public hearing, promotion of localism is also a cornerstone of the public interest in the media. This has been recognized by the courts and FCC since the adoption of the 1934 Communications Act to the present day. For extensive citations on the importance of consciously promoting localism in the media, see In the Matter of Broadcast Localism, Notice of Inquiry, FCC MB Docket No. 04-233 (released July 1, 2004) and cases cited therein. (n.b. Para 4 of In the Matter of Broadcast Localism: "All of these rules, policies and procedures reflect the Commission's overarching goal of establishing and maintaining a system of local broadcasting that is responsive to the unique needs and interests of individual communities." It is clear that a meaningful local negotiation process enables municipal officials to tailor cable system negotiations to meet local community TV needs, thereby promoting localism. The proposed 90 day negotiation process would make local negotiations meaningless, and thereby undermine the localism that is achieved through the licensing process. With most broadcast network affiliates (CBS, NBC, ABC and Fox affiliates) carrying virtually no small or medium town news, Massachusetts citizens increasingly look to PEG Access studios as a unique source of local news and information. The importance of maintaining a meaningful local franchising process is substantial. Likewise, meaningful local negotiations promote diverse information, also through the promotion of community television, which is described as the "electronic equivalent of the speaker's soapbox" in the legislative history of the 1984 Cable Act. The proposed 90 day negotiation process would also threaten important diversity values by undermining the licensing process which has resulted in diverse PEG Access programming in many towns and cities throughout the Commonwealth. Undermining of localism and diversity values works against our overarching First Amendment goals.

IV. Cable Division Information Requests

The following addresses certain questions raised by the Cable Division in its August 23, 2006 additional information requests

1. Who initially reviews cable license applications on behalf of the Issuing Authority in deciding whether to begin the licensing process pursuant to 207 CMR s. 302(2)?
How soon after receipt of the application does this review begin?

Initial license application review is undertaken by diverse parties, depending on the Town or City. Review is usually underway within one to two weeks of receipt of the application. Many Issuing Authorities rely on cable advisory committees for initial advisory review as cable advisory committees usually have knowledge of Cable System needs and level playing field issues. Selectmen and/or Town Administrators/Mayors/City Managers and/or other designees may also participate in initial review. However, the overall trend is to bring the cable committee “in the loop” based on its specialized knowledge.

2. Has the municipality established a Cable Advisory Committee? Is this a standing committee? When is the committee in session? How often does the committee meet? What are the terms of its members? Who may serve on the committee? How soon after a cable license application does the Committee receive application materials and begin its review?

Almost all of the undersigned communities have active, standing Cable Advisory Committees. When licensing proceedings are not pending, most meet on an as-needed basis to pursue compliance and oversight. However, when licensing proceedings are pending, most committees meet at least once or twice a month, and often more during negotiations, sometimes weekly. This has been a timetable acceptable to towns and cable operators over the decades. Member terms vary from town to town, but typically are for 1 – 3 years and committees are open to residents with interest in and knowledge of cable. Committee review typically proceeds promptly within a week or two of receipt. Naturally, some committees may have vacancies at any time, and filling of vacancies is often precipitated by active cable matters coming before the municipality. It should be noted that the widespread use of cable committees in Massachusetts adds substantial value to the process, at minimal cost. Cable committees work on a volunteer basis, adding tens of thousands of persons and tens of thousands of volunteer hours to the statewide system of cable negotiations, cable oversight and complaint processing. Many cable committee members have decades of experience with local cable systems (committee members often have unique knowledge of important local cablecasting details). Any rule change that weakens local franchising will undermine the interest of cable committee members, thereby reducing volunteerism and the value now donated to the state and its cable systems. State or federal franchising could never replicate the vast input now provided by the diligent efforts of hundreds of cable committees. Reducing the licensing period will drive away cable committee volunteers, and thereby harm the state’s interest in good cable oversight.

3. Does the municipality have a city solicitor or town counsel? Who represents the municipality in negotiations? How soon after a cable license application is submitted does the negotiator receive application materials and commence negotiations? Does the negotiator have direct authority to offer final terms that may be included in a license to be

executed by the municipality? If not, please describe the steps necessary to authorize proposed term sheets.

Virtually all cities and towns have municipal counsel, however, regular municipal counsel generally are not comfortable performing specialized cable license negotiations without assistance from experienced Cable Advisory Committees and/or specialized cable counsel. Cable Committees and counsel generally commence negotiations soon after having reasonable time to review a cable operator's initial proposal/application. Such review requires significant time for a municipality to assess local PEG access and INet operating and capital budget needs and other substantive and legal negotiations issues. In addition, before commencing negotiations, municipal negotiators must perform some level playing field analysis to determine the value of existing license benefits, as new license terms and conditions must be substantially equivalent to initial license terms and conditions, taken as a whole. Likewise, municipal negotiators must receive Issuing Authority review and at least preliminary approval of the proposed negotiation agenda.

In the Verizon licensing proceedings, Verizon's proposals/applications were not filed in completed form, as they lacked specific financial offers, adding yet more time to the negotiations process. As Cable Committees and counsel tend to handle the negotiations, and Cable Committees and counsel are merely advisory to the Issuing Authority, most Cable Committee and legal counsel negotiations decisions are subject to ultimate review and approval of the Issuing Authority. Municipal Issuing Authorities tend to approve most, but by no means all, negotiations recommendations of the municipal negotiations team. If the licensing period is reduced, it will, among other things, make service on Cable Committees seem pointless, reduce Cable Committee membership, and thereby cause towns to have to rely on more costly legal counsel for more tasks in the licensing process.

4. Is there any period of time wherein a Mayor or Board of Selectmen lacks authority to execute a contract? Between an election and new Mayor takes office?

As a practical matter, many municipal officials prefer not to take major policy actions just prior to the inauguration of a new administration, however, such action may be appropriate where the outgoing administration has substantially concluded the licensing process. It might cause undue delay to leave conclusion of the licensing process to a new administration not familiar with recent license negotiations. The undersigned is not aware of legal limits on licensing activity in the months between an election and prior to inauguration.

5. Please state whether there are provisions of the current licensing process that may be streamlined and, if so, please identify such provisions.

The Issuing Authorities are of the view that most municipalities prefer waiver of the national advertising requirement to streamline the licensing process. The Issuing Authorities believe that reasonable expediting of the process would result from reducing to 30 days the locally advertised timetable for filing applications following publication of a local legal advertisement. The process could be most effectively streamlined if Verizon were simply file license applications earlier and on its own initiative, as Verizon actually waited and wasted months by not filing applications when its fiber (FIOS) plant was being constructed, and by not yet even filing applications in major markets such as Boston. Verizon also could expedite by the process by simply agreeing to match terms in existing licenses rather than negotiate a different package with hoped for equivalency as a whole. Numerous municipal officials testified at the public hearing they would have forthwith executed licenses with Verizon had Verizon agreed to

substantially adopt existing license language. Verizon would not do so. Likewise, Verizon could streamline the process by adopting a licensing strategy that provided Issuing Authorities with more standard license terms and conditions, as well as actual level playing field analysis.

6. Please provide a typical timeline of all steps necessary to identify the community's cable-related needs and interests and to issue the issuing authority report or request for proposal.

Issuing Authorities typically authorize cable advisory committees to meet with public and school officials, PEG access producers and INet technology professionals to identify local PEG Access and INet channel, budget, equipment and related needs, interests and other substantive and legal licensing issues. This typically requires up to several months of research, meetings and identification of needs, plus an additional two –three weeks to prepare and circulate the Issuing Authority Report. Typically, the Cable Committee or legal counsel will brief the Selectmen on the contents of the draft Issuing Authority Report, and the Selectmen commonly require several weeks to review and provide feedback on the Issuing Authority Report before final release. The foregoing applies to the timeline prior to the release of the Issuing Authority Report.

7.How often is a full review of cable-related needs and interests necessary?

Full review of cable-related needs and interests is necessary whenever the municipality is entering license negotiations with a license applicant seeking to operate within the municipality. If the municipality concluded ascertainment within a recent time frame due to recent renewal proceedings (e.g., within the past 2 years), less time will be necessary for ascertainment of needs. However, the mere fact that ascertainment occurred during a recent renewal does not negate the need for current ascertainment. If a recent renewal only partially met community needs (which is frequently the case), current ascertainment will have to be conducted to identify which needs were not met and how initial licensing can address those needs. A practical example illustrates this: if a recent renewal resulted in payments for studio equipment, but did not result in the Licensee's responding to serious INet needs, the initial licensing with Verizon may focus on INet funding needs to a degree that was not possible during a recent renewal. In other words, updating of ascertainment is necessary as part of any license negotiations as the parties frequently cannot recycle the work and ascertainment from one license process to another.

V. Conclusion

Municipalities want to promote competition in the cable marketplace. The Cable Division's own records provide ample evidence that when RCN applied for initial licenses, municipalities demonstrated their commitment to promoting competition. However, as made overwhelmingly clear by so many commenting parties in this proceeding, Verizon's proposed 90-day timetable for initial licensing would render the licensing process meaningless. Detailed and extensive comments from scores of experienced municipal officials plainly demonstrate that initial cable television licensing takes much, much longer than 90 days. The Commenting Parties have recommended that the Cable Division take judicial notice of its own public records of recently completed RCN initial licensing, which provide strong record evidence that good faith, diligent initial licensing requires approximately one year. As detailed in our Initial Comments, the inadequacy of the proposed timetable becomes plain upon outlining customary and necessary municipal licensing tasks that are inherently complex, deliberative and protracted in nature. In these Reply Comments, we have also outlined how the substantive negotiations

issues that must be addressed in initial licensing are complex and of great import to Massachusetts communities and the general public. Ascertaining, negotiating and drafting regarding such substantive issues, and carrying out diverse licensing procedures, requires a careful and deliberative licensing process of close to 12 months to allow adequate public participation, and proper negotiation, drafting and hearings.

This rulemaking has also made clear that there are numerous procedural flaws (other than the impossible timetable) in the proposed regulation. As outlined in the Initial Comments, the regulation would delete the requirement and the time needed for the municipality to draft and issue community needs specifications, as now done by municipalities in the “Issuing Authority Report,” (IAR) which is the functional equivalent of a Request for Proposal (RFP). Indeed, the regulation includes no reference to any public hearing or public comment proceeding on the licensee’s proposal for the community (calling only for a hearing on licensee’s “qualifications”). These are but a few of the serious procedural flaws discussed in detail in this Rulemaking.

Finally, the Commenting Parties have consistently urged that high level values warrant respect for and maintaining a meaningful local licensing process. A 90 day licensing timetable will, among other things, undermine the dynamics and information exchange that have created a positive working relationship between municipalities and the cable industry. As discussed at the public hearing, promotion of localism, diversity and the First Amendment are major pillars of the public interest in the media and a 90-day licensing process will gut municipal ability to negotiate for local facilities that promote localism and diversity, thereby undermining First Amendment values.

The existing licensing framework has well-served municipalities and cable operators for almost thirty years. These procedures have allowed municipalities to license competitors such as RCN and municipal light departments in the communities where competitive licenses were sought. These competitors completed initial licensing with reasonable timetables, and the licensing framework was able to promote competition to incumbent operators wherever new entrants applied. As explained by the overwhelming majority of commenting parties, the changes proposed in Verizon’s petition are unnecessary, unfair, extreme and against the public interest. The Cable Division should not gut the current regulatory process by eliminating meaningful and important local input. The public interest requires the continuation, not the suppression, of such local participation.

Respectfully submitted by:

The Town of Belmont
The Town of Brookline
The Town of Canton
The Town of Dartmouth
The Town of Dedham
The City of Easthampton
The Town of Framingham
The Town of Grafton
The Town of Groveland
The Town of Hingham
The Town of Lakeville
The Town of Littleton
The Town of Milton
The Town of Natick

The Town of Needham
The City of Newton
The Town of Northborough
The Town of Norwood
The Town of Salisbury
The Town of Sudbury
The City of Taunton
The Town of Wellesley
The Town of Westford
The Town of Westwood
The Town of Wilmington
The Town of Wilbraham
Massachusetts Chapter of the Alliance for Community Media
Northeast Region of the Alliance for Community Media
Boston Community Programming and Access Foundation, Inc.
Cambridge Community Television, Inc.
Ludlow Community Television
Somerville Community Access Television, Inc.
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September 13, 2006

